



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY

NEW YORK, NY 10007-1866

August 20, 2021

Courtney J. Riley
President, NL Industries, Inc.
5430 LBJ Freeway, Suite 1700
Dallas, Texas 75240

Re: Notice of Work Takeover of Remedial Design for Raritan Bay Slag Superfund Site,
(Seawall Sector), Old Bridge and Sayreville, New Jersey

Dear Ms. Riley:

The U.S. Environmental Protection Agency ("EPA") hereby notifies NL Industries, Inc. ("NL"), that EPA is taking over the Remedial Design ("RD") under Section XIV, Paragraphs 52(d) and 55 of Unilateral Administrative Order ("UAO"), CERCLA Docket No. 02-2014-2012, issued to NL on January 30, 2014, with respect to the Raritan Bay Slag Superfund Site ("Site") located in Old Bridge and Sayreville, New Jersey and which became effective on February 18, 2014.

By letter dated October 17, 2019, NL submitted its Notice of Intent of Partial Compliance with the UAO ("Notice") to identify that portion of the UAO with which NL intends to comply, that is, work that pertains to the remedial design of the Seawall Sector at the Site. The Notice also addressed a Directive and Notice to Insurers issued by the New Jersey Department of Environmental Protection ("NJDEP") to NL on June 17, 2008. The RD work that NL agreed to perform was described in the Statement of Work for the Remedial Design for the Raritan Bay Slag Superfund Site Seawall Sector ("Seawall RD SOW") and a Remedial Design Work Plan ("RD Work Plan"), prepared by NL with EPA review. Since that time NL has been working on completing the design documentation.

On April 1, 2021, on behalf of NL, Advanced GeoServices Corporation, a Montrose Environmental Group company ("Montrose AGC"), submitted the Draft Revised Pre-Final 95% Remedial Design ("Draft Revised 95% RD") document for the Seawall Sector of the Site. EPA has determined that the Draft Revised 95% RD is not acceptable and significant revisions are required.

EPA did not come to this decision lightly. As you are well aware, we have spent many hours working with representatives of Montrose AGC and NL to discuss our comments and concerns in an effort to help produce a design that is acceptable to EPA and NJDEP, and that will support the cleanup of the Seawall Sector of the Site in a manner consistent with the 2014 Record of Decision and that complies with applicable or relevant and appropriate requirements.

Montrose AGC submitted a 60% design document to EPA on January 10, 2020, after EPA provided a copy of the 30% design document previously prepared by EPA. EPA provided NL with detailed comments on the 60% RD on February 27, 2020 and, on June 1, 2020, Montrose AGC submitted the Pre-Final 95% RD. EPA disapproved the Pre-Final 95% RD on December 1, 2020, and informed NL/Montrose AGC that EPA's December 1, 2020, comments must be satisfactorily addressed if the 95% RD was to be approved by EPA. EPA also directed NL to submit a revised pre-final design by January 15, 2021, which was longer than the fourteen days for revisions provided in the UAO, Paragraph 54.

NL requested an extension of this deadline and, in an email sent on February 4, 2021 (enclosed), EPA extended the deadline for submission of the revised report until April 1, 2021. EPA's February 4, 2021 email included the following cautionary language:

We are hereby granting the extension to April 1, 2021 that has been requested. Note that a 95% design document should be close to approvable. Any comments on the revised 95% RD should be relatively minor in nature and specific. As such, please be aware that if EPA determines that the next draft of this document is not acceptable and significant revision is still required, then EPA will exercise its authority under the UAO to take back the work and complete the design documents in-house.

EPA has completed its in-house reviews of the Draft Revised 95% RD, and has also received and reviewed numerous comments from NJDEP. Based on our internal EPA review of the document and NJDEP's comments, it is clear that NL did not satisfactorily address a number of the deficiencies identified in EPA's December 1, 2020 comments, including many of the overarching issues highlighted in EPA's February 4, 2021 email. A few examples of these deficiencies include, but are in no way limited to, the following:

- Clear performance metrics are not included for all critical aspects of the remedial action. The Draft Revised 95% RD makes reference to performance metrics, but they are not uniformly defined. Rather, many of these decisions are left to the remedial action contractor, which is not appropriate.
- Contingency plans are not uniformly developed. EPA's comments indicated that the design must include mitigation strategies. The Draft Revised 95% RD does include an across-the-board 20 percent (or greater) cost factor to address unexpected issues/conditions, but a simple cost contingency, which accounts for potential cost changes, is distinct from and does not address the need for contingency planning, including identifying mitigation strategies.
- Key planning documents, and/or metrics or specifications for developing those documents, are still missing from the Draft Revised 95% RD. The relevant documents include, but are not necessarily limited to, an excavation plan, a water management and sampling plan, an on-site transportation plan and a stabilization plan.
- The plans do not provide sufficient detail, overall, so that a remedial action contractor could undertake the work and successfully clean up the site.

A 95% RD is typically considered near final and should require only minor comments, if any; key design calculations, criteria and specifications should not be missing. Despite EPA's extraordinary effort in working with NL, the revised document is nowhere near what we would consider "near-final" and would require at least one more significant revision, and possibly more. The Draft Revised 95% RD has significant and fundamental deficiencies, including some that have persisted since the initial 60% design. EPA's comments, and the changes needed to address them on the Draft Revised 95% RD will not be "relatively minor in nature and specific" nor would it be a good use of government resources to work towards yet another draft. As such, pursuant to Paragraph 55 of the UAO and consistent with our February 4, 2021 email, EPA is hereby exercising its authority to take back the work and complete the remedial design for the Seawall Sector in-house. To be clear, EPA is not directing NL to provide another draft of the 95% RD.

Given the urgent need to complete this design so that cleanup of the Site can proceed, and considering the significant deficiencies in the Draft Revised 95% RD, effective immediately, EPA is exercising its rights under Section XIV of the UAO and will proceed to complete the Seawall Sector design. To this end, Remedial Project Manager Tanya Mitchell will be in contact in the near future to discuss an orderly takeover of the work.

This letter is not intended to serve as notice that NL or any other potentially responsible parties cannot or should not conduct the remedial action for the Seawall Sector once the remedial design is finalized. Further, EPA reserves all, and waives none, of its authority and rights under CERCLA or other law, whether or not specifically set forth in this letter, regarding NL's liability under CERCLA, its compliance with the UAO, including Section IX (Work to be Performed), and its liability for injunctive relief, penalties and punitive damages under UAO Section XXIV (Enforcement and Reservations).

Please contact me at 212-637-4309 if you have any questions.

Sincerely yours,

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Eric Wilson, Deputy Director
Superfund and Emergency Management Division

Enclosure

cc: Mark Pedersen, NJDEP
Chris Reitman, Montrose AGC